

ASSEMBLY BILL

No. 243

Introduced by Assembly Member Nava

February 10, 2009

An act to amend Section 597.1 of, and to add Section 597.8 to, the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, as introduced, Nava. Animal abuse: penalties.

Existing law provides that upon the conviction of a person charged with animal abuse, as specified, the court is authorized to enjoin the defendant from owning, possessing, caring for, or having any contact with, animals, as specified.

This bill would instead provide that upon the conviction of a person charged with animal abuse, as specified, the court shall be required to enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for specified periods of time. The bill would further provide that any violation of an order shall be treated and punished as a criminal contempt of court or as a misdemeanor. By revising the penalties for an existing crime and by increasing the duties of local humane officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs

so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.1 of the Penal Code is amended to
2 read:

3 597.1. (a) Every owner, driver, or keeper of any animal who
4 permits the animal to be in any building, enclosure, lane, street,
5 square, or lot of any city, county, city and county, or judicial district
6 without proper care and attention is guilty of a misdemeanor. Any
7 peace officer, humane society officer, or animal control officer
8 shall take possession of the stray or abandoned animal and shall
9 provide care and treatment for the animal until the animal is
10 deemed to be in suitable condition to be returned to the owner.
11 When the officer has reasonable grounds to believe that very
12 prompt action is required to protect the health or safety of the
13 animal or the health or safety of others, the officer shall
14 immediately seize the animal and comply with subdivision (f). In
15 all other cases, the officer shall comply with the provisions of
16 subdivision (g). The cost of caring for and treating any animal
17 properly seized under this subdivision shall constitute a lien on
18 the animal and the animal shall not be returned to its owner until
19 the charges are paid, if the seizure is upheld pursuant to this section.

20 (b) Every sick, disabled, infirm, or crippled animal, except a
21 dog or cat, that is abandoned in any city, county, city and county,
22 or judicial district may be killed by the officer if, after a reasonable
23 search, no owner of the animal can be found. It shall be the duty
24 of all peace officers, humane society officers, and animal control
25 officers to cause the animal to be killed or rehabilitated and placed
26 in a suitable home on information that the animal is stray or
27 abandoned. The officer may likewise take charge of any animal,
28 including a dog or cat, that by reason of lameness, sickness,
29 feebleness, or neglect, is unfit for the labor it is performing, or that
30 in any other manner is being cruelly treated, and provide care and
31 treatment for the animal until it is deemed to be in a suitable
32 condition to be returned to the owner. When the officer has
33 reasonable grounds to believe that very prompt action is required

1 to protect the health or safety of an animal or the health or safety
2 of others, the officer shall immediately seize the animal and comply
3 with subdivision (f). In all other cases, the officer shall comply
4 with subdivision (g). The cost of caring for and treating any animal
5 properly seized under this subdivision shall constitute a lien on
6 the animal and the animal shall not be returned to its owner until
7 the charges are paid.

8 (c) Any peace officer, humane society officer, or animal control
9 officer shall convey all injured cats and dogs found without their
10 owners in a public place directly to a veterinarian known by the
11 officer to be a veterinarian who ordinarily treats dogs and cats for
12 a determination of whether the animal shall be immediately and
13 humanely destroyed or shall be hospitalized under proper care and
14 given emergency treatment.

15 If the owner does not redeem the animal within the locally
16 prescribed waiting period, the veterinarian may personally perform
17 euthanasia on the animal. If the animal is treated and recovers from
18 its injuries, the veterinarian may keep the animal for purposes of
19 adoption, provided the responsible animal control agency has first
20 been contacted and has refused to take possession of the animal.

21 Whenever any animal is transferred to a veterinarian in a clinic,
22 such as an emergency clinic that is not in continuous operation,
23 the veterinarian may, in turn, transfer the animal to an appropriate
24 facility.

25 If the veterinarian determines that the animal shall be hospitalized
26 under proper care and given emergency treatment, the costs of any
27 services that are provided pending the owner's inquiry to the
28 responsible agency, department, or society shall be paid from the
29 dog license fees, fines, and fees for impounding dogs in the city,
30 county, or city and county in which the animal was licensed or, if
31 the animal is unlicensed, shall be paid by the jurisdiction in which
32 the animal was found, subject to the provision that this cost be
33 repaid by the animal's owner. The cost of caring for and treating
34 any animal seized under this subdivision shall constitute a lien on
35 the animal and the animal shall not be returned to the owner until
36 the charges are paid. No veterinarian shall be criminally or civilly
37 liable for any decision that he or she makes or for services that he
38 or she provides pursuant to this subdivision.

39 (d) An animal control agency that takes possession of an animal
40 pursuant to subdivision (c) shall keep records of the whereabouts

1 of the animal from the time of possession to the end of the animal's
2 impoundment, and those records shall be available for inspection
3 by the public upon request for three years after the date the animal's
4 impoundment ended.

5 (e) Notwithstanding any other provision of this section, any
6 peace officer, humane society officer, or any animal control officer
7 may, with the approval of his or her immediate superior, humanely
8 destroy any stray or abandoned animal in the field in any case
9 where the animal is too severely injured to move or where a
10 veterinarian is not available and it would be more humane to
11 dispose of the animal.

12 (f) Whenever an officer authorized under this section seizes or
13 impounds an animal based on a reasonable belief that prompt action
14 is required to protect the health or safety of the animal or the health
15 or safety of others, the officer shall, prior to the commencement
16 of any criminal proceedings authorized by this section, provide
17 the owner or keeper of the animal, if known or ascertainable after
18 reasonable investigation, with the opportunity for a postseizure
19 hearing to determine the validity of the seizure or impoundment,
20 or both.

21 (1) The agency shall cause a notice to be affixed to a
22 conspicuous place where the animal was situated or personally
23 deliver a notice of the seizure or impoundment, or both, to the
24 owner or keeper within 48 hours, excluding weekends and holidays.
25 The notice shall include all of the following:

26 (A) The name, business address, and telephone number of the
27 officer providing the notice.

28 (B) A description of the animal seized, including any
29 identification upon the animal.

30 (C) The authority and purpose for the seizure, or impoundment,
31 including the time, place, and circumstances under which the
32 animal was seized.

33 (D) A statement that, in order to receive a postseizure hearing,
34 the owner or person authorized to keep the animal, or his or her
35 agent, shall request the hearing by signing and returning an
36 enclosed declaration of ownership or right to keep the animal to
37 the agency providing the notice within 10 days, including weekends
38 and holidays, of the date of the notice. The declaration may be
39 returned by personal delivery or mail.

1 (E) A statement that the cost of caring for and treating any
2 animal properly seized under this section is a lien on the animal
3 and that the animal shall not be returned to the owner until the
4 charges are paid, and that failure to request or to attend a scheduled
5 hearing shall result in liability for this cost.

6 (2) The postseizure hearing shall be conducted within 48 hours
7 of the request, excluding weekends and holidays. The seizing
8 agency may authorize its own officer or employee to conduct the
9 hearing if the hearing officer is not the same person who directed
10 the seizure or impoundment of the animal and is not junior in rank
11 to that person. The agency may utilize the services of a hearing
12 officer from outside the agency for the purposes of complying with
13 this section.

14 (3) Failure of the owner or keeper, or of his or her agent, to
15 request or to attend a scheduled hearing shall result in a forfeiture
16 of any right to a postseizure hearing or right to challenge his or
17 her liability for costs incurred.

18 (4) The agency, department, or society employing the person
19 who directed the seizure shall be responsible for the costs incurred
20 for caring and treating the animal, if it is determined in the
21 postseizure hearing that the seizing officer did not have reasonable
22 grounds to believe very prompt action, including seizure of the
23 animal, was required to protect the health or safety of the animal
24 or the health or safety of others. If it is determined the seizure was
25 justified, the owner or keeper shall be personally liable to the
26 seizing agency for the cost of the seizure and care of the animal,
27 the charges for the seizure and care of the animal shall be a lien
28 on the animal, and the animal shall not be returned to its owner
29 until the charges are paid and the seizing agency or hearing officer
30 has determined that the animal is physically fit or the owner
31 demonstrates to the seizing agency's or the hearing officer's
32 satisfaction that the owner can and will provide the necessary care.

33 (g) Where the need for immediate seizure is not present and
34 prior to the commencement of any criminal proceedings authorized
35 by this section, the agency shall provide the owner or keeper of
36 the animal, if known or ascertainable after reasonable investigation,
37 with the opportunity for a hearing prior to any seizure or
38 impoundment of the animal. The owner shall produce the animal
39 at the time of the hearing unless, prior to the hearing, the owner
40 has made arrangements with the agency to view the animal upon

1 request of the agency, or unless the owner can provide verification
2 that the animal was humanely destroyed. Any person who willfully
3 fails to produce the animal or provide the verification is guilty of
4 an infraction, punishable by a fine of not less than two hundred
5 fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

6 (1) The agency shall cause a notice to be affixed to a
7 conspicuous place where the animal was situated or personally
8 deliver a notice stating the grounds for believing the animal should
9 be seized under subdivision (a) or (b). The notice shall include all
10 of the following:

11 (A) The name, business address, and telephone number of the
12 officer providing the notice.

13 (B) A description of the animal to be seized, including any
14 identification upon the animal.

15 (C) The authority and purpose for the possible seizure or
16 impoundment.

17 (D) A statement that, in order to receive a hearing prior to any
18 seizure, the owner or person authorized to keep the animal, or his
19 or her agent, shall request the hearing by signing and returning the
20 enclosed declaration of ownership or right to keep the animal to
21 the officer providing the notice within two days, excluding
22 weekends and holidays, of the date of the notice.

23 (E) A statement that the cost of caring for and treating any
24 animal properly seized under this section is a lien on the animal,
25 that any animal seized shall not be returned to the owner until the
26 charges are paid, and that failure to request or to attend a scheduled
27 hearing shall result in a conclusive determination that the animal
28 may properly be seized and that the owner shall be liable for the
29 charges.

30 (2) The preseizure hearing shall be conducted within 48 hours,
31 excluding weekends and holidays, after receipt of the request. The
32 seizing agency may authorize its own officer or employee to
33 conduct the hearing if the hearing officer is not the same person
34 who requests the seizure or impoundment of the animal and is not
35 junior in rank to that person. The agency may utilize the services
36 of a hearing officer from outside the agency for the purposes of
37 complying with this section.

38 (3) Failure of the owner or keeper, or his or her agent, to request
39 or to attend a scheduled hearing shall result in a forfeiture of any

1 right to a preseizure hearing or right to challenge his or her liability
2 for costs incurred pursuant to this section.

3 (4) The hearing officer, after the hearing, may affirm or deny
4 the owner's or keeper's right to custody of the animal and, if
5 reasonable grounds are established, may order the seizure or
6 impoundment of the animal for care and treatment.

7 (h) If any animal is properly seized under this section, the owner
8 or keeper shall be personally liable to the seizing agency for the
9 cost of the seizure and care of the animal. Furthermore, if the
10 charges for the seizure or impoundment and any other charges
11 permitted under this section are not paid within 14 days of the
12 seizure, or, if the owner, within 14 days of notice of availability
13 of the animal to be returned, fails to pay charges permitted under
14 this section and take possession of the animal, the animal shall be
15 deemed to have been abandoned and may be disposed of by the
16 impounding officer.

17 (i) If the animal requires veterinary care and the humane society
18 or public agency is not assured, within 14 days of the seizure of
19 the animal, that the owner will provide the necessary care, the
20 animal shall not be returned to its owner and shall be deemed to
21 have been abandoned and may be disposed of by the impounding
22 officer. A veterinarian may humanely destroy an impounded animal
23 without regard to the prescribed holding period when it has been
24 determined that the animal has incurred severe injuries or is
25 incurably crippled. A veterinarian also may immediately humanely
26 destroy an impounded animal afflicted with a serious contagious
27 disease unless the owner or his or her agent immediately authorizes
28 treatment of the animal by a veterinarian at the expense of the
29 owner or agent.

30 (j) No animal properly seized under this section shall be returned
31 to its owner until, in the determination of the seizing agency or
32 hearing officer, the animal is physically fit or the owner can
33 demonstrate to the seizing agency's or hearing officer's satisfaction
34 that the owner can and will provide the necessary care.

35 (k) Upon the conviction of a person charged with a violation of
36 this section, or Section 597 or 597a, all animals lawfully seized
37 and impounded with respect to the violation shall be adjudged by
38 the court to be forfeited and shall thereupon be transferred to the
39 impounding officer or appropriate public entity for proper adoption
40 or other disposition. A person convicted of a violation of this

1 section shall be personally liable to the seizing agency for all costs
2 of impoundment from the time of seizure to the time of proper
3 disposition. Upon conviction, the court shall order the convicted
4 person to make payment to the appropriate public entity for the
5 costs incurred in the housing, care, feeding, and treatment of the
6 seized or impounded animals. Each person convicted in connection
7 with a particular animal may be held jointly and severally liable
8 for restitution for that particular animal. The payment shall be in
9 addition to any other fine or sentence ordered by the court.

10 ~~The court may also order, as a condition of probation, that the~~
11 ~~convicted person be prohibited from owning, possessing, caring~~
12 ~~for, or having any contact with, animals of any kind and require~~
13 ~~the convicted person to immediately deliver all animals in his or~~
14 ~~her possession to a designated public entity for adoption or other~~
15 ~~lawful disposition or provide proof to the court that the person no~~
16 ~~longer has possession, care, or control of any animals. In the event~~
17 ~~of the acquittal or final discharge without conviction of the arrested~~
18 ~~person, the court shall, on demand, direct the release of seized or~~
19 ~~impounded animals upon a showing of proof of ownership. Any~~
20 ~~questions regarding ownership shall be determined in a separate~~
21 ~~hearing by the court where the criminal case was finally adjudicated~~
22 ~~and the court shall hear testimony from any persons who may assist~~
23 ~~the court in determining ownership of the animal. If the owner is~~
24 ~~determined to be unknown or the owner is prohibited or unable to~~
25 ~~retain possession of the animals for any reason, the court shall~~
26 ~~order the animals to be released to the appropriate public entity~~
27 ~~for adoption or other lawful disposition. This section is not intended~~
28 ~~to cause the release of any animal, bird, reptile, amphibian, or fish,~~
29 ~~seized or impounded pursuant to any other statute, ordinance, or~~
30 ~~municipal regulation. This section shall not prohibit the seizure or~~
31 ~~impoundment of animals as evidence as provided for under any~~
32 ~~other provision of law.~~

33 *(l)* It shall be the duty of all peace officers, humane society
34 officers, and animal control officers to use all currently acceptable
35 methods of identification, both electronic and otherwise, to
36 determine the lawful owner or caretaker of any seized or
37 impounded animal. It shall also be their duty to make reasonable
38 efforts to notify the owner or caretaker of the whereabouts of the
39 animal and any procedures available for the lawful recovery of the
40 animal and, upon the owner's and caretaker's initiation of recovery

1 procedures, retain custody of the animal for a reasonable period
2 of time to allow for completion of the recovery process. Efforts to
3 locate or contact the owner or caretaker and communications with
4 persons claiming to be the owner or caretaker shall be recorded
5 and maintained and be made available for public inspection.

6 SEC. 2. Section 597.8 is added to the Penal Code, to read:

7 597.8. (a) (1) Upon a first misdemeanor conviction of a person
8 for a violation of subdivision (a) or (b) of Section 597, or Section
9 597a, 597b, 597h, 597j, 597s, or 597.1, the court shall, in addition
10 to any other sentence or penalty imposed and as a condition of
11 probation or term of release from custody, enter an order enjoining
12 the person from owning, possessing, maintaining, having custody
13 of, residing with, or caring for any animal for a period of not less
14 than three years nor more than seven years, commencing on the
15 date of sentencing or release from custody, whichever is later.

16 (2) Upon a second or subsequent misdemeanor conviction of a
17 person for a violation of subdivision (a) or (b) of Section 597, or
18 Section 597a, 597b, 597h, 597j, 597s, or 597.1, the court shall, in
19 addition to any other sentence or penalty imposed and as a
20 condition of probation or term of release from custody, enter an
21 order enjoining the person from owning, possessing, maintaining,
22 having custody of, residing with, or caring for any animal for a
23 period of not less than five years nor more than 10 years,
24 commencing on the date of sentencing or release from custody,
25 whichever is later.

26 (b) (1) Upon a first felony conviction of a person for a violation
27 of subdivision (a) or (b) of Section 597, or Section 597b or 597.5,
28 the court shall, in addition to any other sentence or penalty imposed
29 and as a condition of probation or term of release from custody,
30 enter an order enjoining the person from owning, possessing,
31 maintaining, having custody of, residing with, or caring for any
32 animal for a period of not less than five years nor more than 15
33 years, commencing on the date of sentencing or release from
34 custody, whichever is later.

35 (2) Upon a second or subsequent felony conviction of a person
36 for a violation of subdivision (a) or (b) of Section 597, or Section
37 597b or 597.5, the court shall, in addition to any other sentence or
38 penalty imposed and as a condition of probation or term of release
39 from custody, enter an order enjoining the person from owning,
40 possessing, maintaining, having custody of, residing with, or caring

1 for any animal for a period of 20 years or more, commencing on
2 the date of sentencing or release from custody, whichever is later.

3 (c) (1) Any violation of an order issued under this section shall
4 be treated and punished as a criminal contempt of court, as
5 specified in Section 166, or as a misdemeanor.

6 (2) Any violation of an order issued under this section shall
7 result in the forfeiture of any animal unlawfully owned or possessed
8 by the defendant.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution for certain
11 costs that may be incurred by a local agency or school district
12 because, in that regard, this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty for a crime
14 or infraction, within the meaning of Section 17556 of the
15 Government Code, or changes the definition of a crime within the
16 meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 However, if the Commission on State Mandates determines that
19 this act contains other costs mandated by the state, reimbursement
20 to local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.